

By: Zaffirini

S.B. No. 1325

A BILL TO BE ENTITLED

AN ACT

relating to authorizing counties to establish public guardians to serve as guardians for certain incapacitated persons.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Chapter 1002, Estates Code, is amended by adding Sections 1002.0215 and 1002.0265 to read as follows:

Sec. 1002.0215. OFFICE OF PUBLIC GUARDIAN. "Office of public guardian" means an office of public guardian established by the commissioners court of a county under Subchapter G-1, Chapter 1104.

Sec. 1002.0265. PUBLIC GUARDIAN. "Public guardian" means a person:

(1) appointed to administer an office of public guardian by the commissioners court of a county under Subchapter G-1, Chapter 1104; or

(2) with which one or more counties enter into an agreement under Section 1104.327(a)(2) or (d).

SECTION 2. Section 1104.251(a), Estates Code, is amended to read as follows:

(a) An individual must be certified under Subchapter C, Chapter 155, Government Code, if the individual:

(1) is a private professional guardian;

(2) will represent the interests of a ward as a guardian on behalf of a private professional guardian;

1 (3) is providing guardianship services to a ward of a  
2 guardianship program on the program's behalf, except as provided by  
3 Section 1104.254; ~~or~~

4 (4) is an employee of the Health and Human Services  
5 Commission ~~[Department of Aging and Disability Services]~~ providing  
6 guardianship services to a ward of the commission;

7 (5) is a public guardian; or

8 (6) will represent the interests of a ward as a  
9 guardian on behalf of a public guardian ~~[department]~~.

10 SECTION 3. Chapter 1104, Estates Code, is amended by adding  
11 Subchapter G-1 to read as follows:

12 SUBCHAPTER G-1. PUBLIC GUARDIANS

13 Sec. 1104.326. DEFINITION. In this subchapter, unless the  
14 context otherwise requires, "office" means an office of public  
15 guardian established under this subchapter.

16 Sec. 1104.327. ESTABLISHMENT OF OFFICES; PUBLIC GUARDIANS.

17 (a) The commissioners court of a county by order may:

18 (1) create an office of public guardian to provide  
19 guardianship services to incapacitated persons described by  
20 Section 1104.334; or

21 (2) enter into an agreement with a person operating a  
22 nonprofit guardianship program or private professional  
23 guardianship program located in the county or in an adjacent county  
24 to act as a public guardian by providing guardianship services to  
25 incapacitated persons described by Section 1104.334.

26 (b) Subject to Subsection (c) and Section 1104.328, the  
27 commissioners court of a county shall appoint a public guardian to

1 administer the office of public guardian established under  
2 Subsection (a)(1) and may employ or authorize the public guardian  
3 to employ personnel necessary to perform the duties of the office,  
4 including personnel who will represent the interests of a ward as a  
5 guardian on behalf of the office if approved by the commissioners  
6 court.

7 (c) The commissioners court of a county may appoint or  
8 contract with an individual to act as public guardian under this  
9 section on a part-time basis with appropriate compensation if:

10 (1) the commissioners court determines a full-time  
11 appointment does not serve the needs of the county; and

12 (2) the individual with whom a contract is entered  
13 into or who is appointed on a part-time basis is not employed in or  
14 does not hold another position that presents a conflict of  
15 interest.

16 (d) The commissioners courts of two or more counties may  
17 collectively enter into an agreement:

18 (1) to create and fund an office of public guardian for  
19 purposes of Subsection (a)(1) and to appoint the same public  
20 guardian to that office under Subsection (b); or

21 (2) with a person operating a guardianship program  
22 described by Subsection (a)(2) to serve as a public guardian for  
23 purposes of that subsection.

24 (e) A person appointed or acting as a public guardian under  
25 this section serves a term of five years.

26 Sec. 1104.328. QUALIFICATIONS OF PUBLIC GUARDIAN. To be  
27 appointed a public guardian under Section 1104.327(b), a person

1 must:

2 (1) be a licensed attorney or be certified under  
3 Subchapter C, Chapter 155, Government Code; and

4 (2) have demonstrable guardianship experience.

5 Sec. 1104.329. CONFLICT OF INTEREST. An office must be  
6 independent from providers of services to wards and proposed wards  
7 and may not directly provide housing, medical, legal, or other  
8 direct, non-surrogate decision-making services to a ward or  
9 proposed ward.

10 Sec. 1104.330. COMPENSATION. A person appointed or acting  
11 as public guardian under Section 1104.327 shall receive  
12 compensation as set by the commissioners court and is not entitled  
13 to compensation under Subchapter A, Chapter 1155.

14 Sec. 1104.331. BOND REQUIREMENT. (a) A public guardian  
15 shall file with the court clerk a general bond in an amount fixed by  
16 the commissioners court payable to the county and issued by a surety  
17 company approved by the county judge. The bond must be conditioned  
18 on the faithful performance by the person of the person's duties  
19 and, if the public guardian administers an office, the office's  
20 duties.

21 (b) The bond required by this section satisfies any bond  
22 required under Chapter 1105.

23 Sec. 1104.332. VACANCY. If a person appointed or acting as  
24 public guardian vacates the position, the commissioners court shall  
25 appoint or enter into an agreement with a person, subject to Section  
26 1104.328, to serve as public guardian for the unexpired term.

27 Sec. 1104.333. POWERS AND DUTIES. (a) An office or other

1 public guardian shall:

2 (1) evaluate the financial status of a proposed ward  
3 to determine whether the proposed ward is eligible to have the  
4 office or other public guardian appointed guardian of the ward  
5 under Section 1104.334(a)(2); and

6 (2) serve as guardian of the person of a ward on  
7 appointment by a court in accordance with the requirements of this  
8 title.

9 (b) In connection with a financial evaluation under  
10 Subsection (a)(1) and on the request of a public guardian, a court  
11 with jurisdiction over the guardianship proceeding may order the  
12 release of public and private records, including otherwise  
13 confidential records, to the public guardian.

14 (c) Notwithstanding Section 552.261, Government Code, a  
15 state agency may not charge an office or other public guardian for  
16 providing the office with a copy of public information requested  
17 from the agency by the office.

18 Sec. 1104.334. APPOINTMENT OF OFFICE AS GUARDIAN. (a) In  
19 accordance with applicable law, including Subchapter C, Chapter  
20 1101, a court may appoint an office to serve as guardian of the  
21 person of a ward who:

22 (1) resides in or is located on the date the  
23 guardianship application is filed in the county served by the  
24 office;

25 (2) does not have sufficient assets or other resources  
26 to pay a private professional guardian to serve as the ward's  
27 guardian; and

1           (3) does not have a family member, friend, or other  
2 suitable person or entity willing and able to serve as the ward's  
3 guardian.

4           (b) For purposes of Subsection (a)(2), the determination of  
5 a ward's ability to pay a private professional guardian is  
6 dependent on:

7           (1) the nature, extent, and liquidity of the ward's  
8 assets;

9           (2) the ward's disposable net income, including income  
10 of a recipient of medical assistance that is used to pay expenses  
11 under Section 1155.202(a);

12           (3) the nature of the guardianship;

13           (4) the type, duration, and the complexity of services  
14 required by the ward; and

15           (5) additional, foreseeable expenses.

16           (c) The number of appointments of an office under this  
17 section may not exceed 20 wards for each guardian representing the  
18 interests of wards on behalf of the office.

19           (d) If an office meets the limitation provided by Subsection  
20 (c), the office shall immediately give notice to the courts.

21           Sec. 1104.335. CONFIDENTIALITY AND DISCLOSURE OF  
22 INFORMATION. (a) All files, reports, records, communications, or  
23 working papers used or developed by an office or public guardian in  
24 the performance of duties relating to a financial evaluation under  
25 Section 1104.333(a)(1) or the provision of guardianship services  
26 are confidential and not subject to disclosure under Chapter 552,  
27 Government Code.

1        (b) Confidential information may be disclosed only for a  
2 purpose consistent with this subchapter, as required by other state  
3 or federal law, or as necessary to enable an office or public  
4 guardian to exercise the powers and duties as guardian of the person  
5 of a ward.

6        (c) A court on its own motion or on the motion of an  
7 interested person may order disclosure of confidential information  
8 only if:

9                (1) a hearing on the motion is conducted;

10               (2) notice of the hearing is served on the office or  
11 public guardian and each interested person; and

12               (3) the court determines after the hearing and an in  
13 camera review of the information that disclosure is essential to  
14 the administration of justice and will not endanger the life or  
15 safety of any individual who:

16                        (A) is being assessed for guardianship services;

17                        (B) is a ward of the office or public guardian; or

18                        (C) provides services to a ward of the office or  
19 public guardian.

20        (d) The Office of Court Administration of the Texas Judicial  
21 System shall establish policies and procedures for the exchange of  
22 information between offices, public guardians, and other  
23 appropriate governmental entities, as necessary for offices,  
24 public guardians, and governmental entities to properly execute  
25 their respective duties and responsibilities respecting  
26 guardianship services or other needed services for a ward. An  
27 exchange of information under this subsection does not constitute a

1 release for purposes of waiving the confidentiality of the  
2 information exchanged.

3 (e) To the extent consistent with policies and procedures  
4 adopted by an office or public guardian, the office or public  
5 guardian on request may release confidential information in the  
6 record of an individual who is a former ward of the office or public  
7 guardian to:

8 (1) the individual;

9 (2) the individual's guardian; or

10 (3) an executor or administrator of the individual's  
11 estate.

12 (f) Before releasing confidential information under  
13 Subsection (e), an office or public guardian shall edit the  
14 information to protect the identity of any individual whose life or  
15 safety may be endangered by the release. A release of information  
16 under Subsection (e) does not constitute a release for purposes of  
17 waiving the confidentiality of the information released.

18 Sec. 1104.336. CERTAIN ADMINISTRATIVE COSTS. (a) If an  
19 office or public guardian is appointed guardian of the person of a  
20 ward, the administrative costs of the guardianship services  
21 provided to the ward may not be charged to the ward's estate unless  
22 the court determines, subject to Subsection (b), that the ward is  
23 financially able to pay all or part of the costs.

24 (b) A court shall measure a ward's ability to pay for costs  
25 under Subsection (a) by whether the ward has sufficient assets or  
26 other resources to pay a private professional guardian to serve as  
27 the ward's guardian in accordance with Section 1104.334(b).

1       Sec. 1104.337. OFFICE OF COURT ADMINISTRATION OF THE TEXAS  
2 JUDICIAL SYSTEM; REPORT. (a) The Office of Court Administration of  
3 the Texas Judicial System shall:

4           (1) provide training, administrative support, and  
5 resources to assist public guardians in performing their duties  
6 under this subchapter;

7           (2) encourage consistency in data collection, forms,  
8 and reporting instruments among public guardians; and

9           (3) facilitate the exchange of information and  
10 encourage efficient practices among public guardians.

11       (b) Not later than December 1 of each even-numbered year,  
12 the Office of Court Administration of the Texas Judicial System  
13 shall submit a report to the governor and the legislature that  
14 contains an evaluation of public guardians established under this  
15 subchapter, including the establishment and operation of offices of  
16 public guardians under this subchapter and the provision of  
17 guardianship services by the offices. The report must include:

18           (1) an analysis of costs and offsetting savings or  
19 other benefits to the state as a result of the establishment and  
20 operation of public guardians under this subchapter; and

21           (2) recommendations for legislation, if any.

22       (c) If it is cost-effective and feasible, the Office of  
23 Court Administration of the Texas Judicial System may contract with  
24 an appropriate research or public policy entity with expertise in  
25 gerontology, disabilities, and public administration to conduct  
26 the analysis described by Subsection (b)(1).

27       Sec. 1104.338. RULES. The supreme court, in consultation

1 with the Office of Court Administration of the Texas Judicial  
2 System and the presiding judge of the statutory probate courts  
3 elected under Section 25.0022, Government Code, shall adopt rules  
4 necessary to implement this subchapter.

5 SECTION 4. Section 1104.402(a), Estates Code, is amended to  
6 read as follows:

7 (a) Except as provided by Section 1104.403, 1104.404, or  
8 1104.406(a), the clerk of the county having venue of the proceeding  
9 for the appointment of a guardian shall obtain criminal history  
10 record information that is maintained by the Department of Public  
11 Safety or the Federal Bureau of Investigation identification  
12 division relating to:

13 (1) a private professional guardian;

14 (2) each person who represents or plans to represent  
15 the interests of a ward as a guardian on behalf of the private  
16 professional guardian;

17 (3) each person employed by a private professional  
18 guardian who will:

19 (A) have personal contact with a ward or proposed  
20 ward;

21 (B) exercise control over and manage a ward's  
22 estate; or

23 (C) perform any duties with respect to the  
24 management of a ward's estate;

25 (4) each person employed by or volunteering or  
26 contracting with a guardianship program to provide guardianship  
27 services to a ward of the program on the program's behalf; [~~or~~]

1           (5) a public guardian appointed under Section  
2 1104.327(b);

3           (6) each person who represents or plans to represent  
4 the interests of a ward as a guardian on behalf of an office of  
5 public guardian;

6           (7) each person employed by an office of public  
7 guardian who will have personal contact with a ward or proposed  
8 ward; or

9           (8) any other person proposed to serve as a guardian  
10 under this title, including a proposed temporary guardian and a  
11 proposed successor guardian, other than an attorney.

12           SECTION 5. Section 1104.409, Estates Code, is amended to  
13 read as follows:

14           Sec. 1104.409. USE OF INFORMATION BY COURT. The court shall  
15 use the information obtained under this subchapter only in  
16 determining whether to:

17           (1) appoint, remove, or continue the appointment of a  
18 private professional guardian, a guardianship program, an office of  
19 public guardian, or the Health and Human Services Commission  
20 [~~department~~]; or

21           (2) appoint any other person proposed to serve as a  
22 guardian under this title, including a proposed temporary guardian  
23 and a proposed successor guardian, other than an attorney.

24           SECTION 6. Section 1155.151(a-2), Estates Code, is amended  
25 to read as follows:

26           (a-2) Notwithstanding any other law requiring the payment  
27 of court costs in a guardianship proceeding, the following are not

1 required to pay court costs on the filing of or during a  
2 guardianship proceeding:

3 (1) an attorney ad litem;

4 (2) a guardian ad litem;

5 (3) a person or entity who files an affidavit of  
6 inability to pay the costs under Rule 145, Texas Rules of Civil  
7 Procedure, that shows the person or entity is unable to afford the  
8 costs;

9 (4) a nonprofit guardianship program;

10 (5) a governmental entity, including an office of  
11 public guardian; and

12 (6) a government agency or nonprofit agency providing  
13 guardianship services.

14 SECTION 7. Section 1163.101(c), Estates Code, is amended to  
15 read as follows:

16 (c) The guardian of the person shall file a sworn affidavit  
17 that contains:

18 (1) the guardian's current name, address, and  
19 telephone number;

20 (2) the ward's date of birth and current name, address,  
21 telephone number, and age;

22 (3) a description of the type of home in which the ward  
23 resides, which shall be described as:

24 (A) the ward's own home;

25 (B) a nursing home;

26 (C) a guardian's home;

27 (D) a foster home;

- 1 (E) a boarding home;
- 2 (F) a relative's home, in which case the  
3 description must specify the relative's relationship to the ward;
- 4 (G) a hospital or medical facility; or
- 5 (H) another type of residence;
- 6 (4) statements indicating:
- 7 (A) the length of time the ward has resided in the  
8 present home;
- 9 (B) the reason for a change in the ward's  
10 residence, if a change in the ward's residence has occurred in the  
11 past year;
- 12 (C) the date the guardian most recently saw the  
13 ward;
- 14 (D) how frequently the guardian has seen the ward  
15 in the past year;
- 16 (E) whether the guardian has possession or  
17 control of the ward's estate;
- 18 (F) whether the ward's mental health has  
19 improved, deteriorated, or remained unchanged during the past year,  
20 including a description of the change if a change has occurred;
- 21 (G) whether the ward's physical health has  
22 improved, deteriorated, or remained unchanged during the past year,  
23 including a description of the change if a change has occurred;
- 24 (H) whether the ward has regular medical care;
- 25 and
- 26 (I) the ward's treatment or evaluation by any of  
27 the following persons during the past year, including the person's

1 name and a description of the treatment:

2 (i) a physician;

3 (ii) a psychiatrist, psychologist, or other  
4 mental health care provider;

5 (iii) a dentist;

6 (iv) a social or other caseworker; or

7 (v) any other individual who provided  
8 treatment;

9 (5) a description of the ward's activities during the  
10 past year, including recreational, educational, social, and  
11 occupational activities, or a statement that no activities were  
12 available or that the ward was unable or refused to participate in  
13 activities;

14 (6) the guardian's evaluation of:

15 (A) the ward's living arrangements as excellent,  
16 average, or below average, including an explanation if the  
17 conditions are below average;

18 (B) whether the ward is content or unhappy with  
19 the ward's living arrangements; and

20 (C) unmet needs of the ward;

21 (7) a statement indicating whether the guardian's  
22 power should be increased, decreased, or unaltered, including an  
23 explanation if a change is recommended;

24 (8) a statement indicating that the guardian has paid  
25 the bond premium for the next reporting period;

26 (9) if the guardian is a private professional  
27 guardian, a guardianship program, an office of public guardian, or

1 the Health and Human Services Commission [~~Department of Aging and~~  
2 ~~Disability Services~~], whether the guardian or an individual  
3 certified under Subchapter C, Chapter 155, Government Code, who is  
4 providing guardianship services to the ward and who is filing the  
5 affidavit on the guardian's behalf, is or has been the subject of an  
6 investigation conducted by the Judicial Branch [~~Guardianship~~  
7 ~~Certification Commission~~ Board] during the preceding year; and

8 (10) any additional information the guardian desires  
9 to share with the court regarding the ward, including:

10 (A) whether the guardian has filed for emergency  
11 detention of the ward under Subchapter A, Chapter 573, Health and  
12 Safety Code; and

13 (B) if applicable, the number of times the  
14 guardian has filed for emergency detention and the dates of the  
15 applications for emergency detention.

16 SECTION 8. Section 155.001, Government Code, is amended by  
17 amending Subdivisions (4) and (6) and adding Subdivisions (5-a) and  
18 (6-a) to read as follows:

19 (4) "Guardianship program" means a local, county, or  
20 regional program, other than an office of public guardian, that  
21 provides guardianship and related services to an incapacitated  
22 person or other person who needs assistance in making decisions  
23 concerning the person's own welfare or financial affairs.

24 (5-a) "Office of public guardian" has the meaning  
25 assigned by Section 1002.0215, Estates Code.

26 (6) "Private professional guardian" means a person,  
27 other than an attorney, ~~or~~ a corporate fiduciary, or an office of

1 public guardian who is engaged in the business of providing  
2 guardianship services.

3 (6-a) "Public guardian" has the meaning assigned by  
4 Section 1002.0265, Estates Code.

5 SECTION 9. Section 155.101(a), Government Code, is amended  
6 to read as follows:

7 (a) The commission shall adopt minimum standards for:

8 (1) the provision of guardianship services or other  
9 similar but less restrictive types of assistance or services by:

10 (A) guardianship programs; and

11 (B) private professional guardians; ~~and~~

12 (2) the provision of guardianship services by the  
13 Health and Human Services Commission; and

14 (3) the provision of guardianship services by offices  
15 of public guardians ~~[Department of Aging and Disability Services].~~

16 SECTION 10. Section 155.102(a), Government Code, is amended  
17 to read as follows:

18 (a) To provide guardianship services in this state, the  
19 following individuals must hold a certificate issued under this  
20 section:

21 (1) an individual who is a private professional  
22 guardian;

23 (2) an individual who will provide those services to a  
24 ward of a private professional guardian on the guardian's behalf;  
25 ~~and~~

26 (3) an individual, other than a volunteer, who will  
27 provide those services or other services under Section 161.114,

1 Human Resources Code, to a ward of a guardianship program or the  
2 Health and Human Services Commission [~~Department of Aging and~~  
3 ~~Disability Services~~] on the program's or commission's  
4 [~~department's~~] behalf;

5 (4) an individual who is a public guardian; and

6 (5) an individual who will provide those services to a  
7 ward of an office of public guardian.

8 SECTION 11. Section 155.105, Government Code, is amended by  
9 adding Subsection (b-1) to read as follows:

10 (b-1) Not later than January 31 of each year, each office of  
11 public guardian shall provide to the commission a report containing  
12 for the preceding year:

13 (1) the number of wards served by the office;

14 (2) the total amount of any money received from this  
15 state for the provision of guardianship services; and

16 (3) the amount of money received from any other public  
17 source, including a county or the federal government, for the  
18 provision of guardianship services, reported by source, and the  
19 total amount of money received from those public sources.

20 SECTION 12. Section 411.1386(a), Government Code, is  
21 amended to read as follows:

22 (a) Except as provided by Subsections (a-1), (a-5), and  
23 (a-6), the clerk of the county having venue over a proceeding for  
24 the appointment of a guardian under Title 3, Estates Code, shall  
25 obtain from the department criminal history record information  
26 maintained by the department that relates to:

27 (1) a private professional guardian;

1           (2) each person who represents or plans to represent  
2 the interests of a ward as a guardian on behalf of the private  
3 professional guardian;

4           (3) each person employed by a private professional  
5 guardian who will:

6                   (A) have personal contact with a ward or proposed  
7 ward;

8                   (B) exercise control over and manage a ward's  
9 estate; or

10                   (C) perform any duties with respect to the  
11 management of a ward's estate;

12           (4) each person employed by or volunteering or  
13 contracting with a guardianship program to provide guardianship  
14 services to a ward of the program on the program's behalf; ~~or~~

15           (5) a public guardian, as defined by Section  
16 1002.0265(1), Estates Code;

17           (6) each person who represents or plans to represent  
18 the interests of a ward as a guardian of the person on behalf of an  
19 office of public guardian;

20           (7) each person employed by an office of public  
21 guardian, as defined by Section 1002.0215, Estates Code, who will  
22 have personal contact with a ward or proposed ward; or

23           (8) any other person proposed to serve as a guardian  
24 under Title 3, Estates Code, including a proposed temporary  
25 guardian and a proposed successor guardian, other than an attorney.

26           SECTION 13. Section 161.103, Human Resources Code, is  
27 amended to read as follows:

1           Sec. 161.103. CONTRACT FOR GUARDIANSHIP SERVICES. (a) If  
2 appropriate, the commission [~~department~~] may contract with a  
3 political subdivision of this state, a guardianship program as  
4 defined by Section 1002.016, Estates Code, a private agency, or  
5 another state agency for the provision of guardianship services  
6 under this section.

7           (b) A contract under Subsection (a) may allow for the  
8 provision of guardianship services by an office of public guardian,  
9 as defined by Section 1002.0215, Estates Code.

10           SECTION 14. Not later than January 1, 2018, the supreme  
11 court shall adopt rules necessary to implement Subchapter G-1,  
12 Chapter 1104, Estates Code, as added by this Act, including rules  
13 governing the transfer of guardianships of the person, if  
14 appropriate, to an office of public guardian established under that  
15 subchapter or a public guardian contracted under that subchapter.

16           SECTION 15. (a) The changes in law made by this Act apply  
17 only to the appointment of a guardian of the person of a ward made on  
18 or after July 1, 2018.

19           (b) Notwithstanding any other law, a person who,  
20 immediately before July 1, 2018, is serving as guardian of the  
21 person of a ward who, under Section 1104.334, Estates Code, as added  
22 by this Act, would be eligible for appointment of an office of  
23 public guardian as the ward's guardian, may continue to serve as  
24 guardian of the person to the ward unless otherwise removed as  
25 provided by law.

26           SECTION 16. This Act takes effect September 1, 2017.